

Court File No. 06 CL 6699

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE)
Madam JUSTICE Pepall)

WEDNESDAY, THE 25TH DAY
OF OCTOBER, 2006



IN THE MATTER OF THE *COMPANIES' CREDITORS*
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PROPOSED PLAN
OF COMPROMISE OR ARRANGEMENT WITH RESPECT TO
ST. MARYS PAPER LTD.

APPLICATION UNDER THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED

INITIAL ORDER

THIS MOTION, made by St. Marys Paper Ltd. (the "Applicant") for an order:

- (a) dispensing with service of the Notice of Application and Application Record on any interested party other than:
 - (i) Bank of America, N.A., acting through its Canada branch (the "DIP Lender");
 - (ii) the Communications, Energy and Paper Workers Union ("CEP"); and
 - (iii) the Superintendent of Financial Services of Ontario (the "Superintendent");
- (b) declaring that the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") applies to the Applicant;

- (c) staying all proceedings and remedies taken or that might be taken in respect of the Applicant or affecting any of its property or its business;
- (d) appointing Deloitte & Touche Inc. as monitor of the Applicant;
- (e) permitting the Applicant to file with the Court a plan of compromise or arrangement between the Applicant and its creditors or some of them;
- (f) authorizing the Applicant to enter into arrangements with the DIP Lender to finance its continued operations and expenses during these proceedings; and
- (g) granting certain other ancillary relief;

was heard this day at 330 University Avenue, Toronto.

ON READING (i) the Notice of Application, (ii) the affidavit of Gerry Henson sworn October 25, 2006 and the exhibits thereto, including the projected cash flow statement and the financial statements for the past year of the Applicant (the "Henson Affidavit"), and (iii) the consent of Deloitte & Touche Inc. (the "Monitor") to act as monitor as contemplated hereunder, all filed; on hearing the submissions of counsel for the Applicant, the Monitor, the DIP Lender, the CEP and the Superintendent; on being advised that none of the other persons who might be interested in these proceedings was served with the Notice of Motion or the Motion Record herein; and on being satisfied that circumstances exist that make this Order appropriate,

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record is hereby abridged so that this Application is properly returnable today and hereby dispenses with further service thereof upon any interested party other than the persons served with the Application Record herein.

APPLICATION OF THE CCAA

2. THIS COURT ORDERS AND DECLARES that the Applicant is a company to which the CCAA applies.

PLAN OF ARRANGEMENT

3. THIS COURT ORDERS that the Applicant shall have the exclusive authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "Plan") between, *inter alia*, the Applicant and one or more classes of its secured and/or unsecured creditors as it deems appropriate.

POSSESSION OF PROPERTY AND OPERATIONS

4. THIS COURT ORDERS that the Applicant shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "Property"). The Applicant shall continue to carry on business in a manner consistent with the commercially reasonable preservation of its business (the "Business") and the Property, except as otherwise authorized or directed by this Order or any further order in these proceedings. The Applicant shall be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "Assistants") currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order or for the purposes of the Plan or the Restructuring (as hereinafter defined).

5. THIS COURT ORDERS that the Applicant shall be required to continue to utilize the cash management system currently in place and established pursuant to the applicable banking arrangements with the DIP Lender, and specifically including the blocked account and lockbox arrangements (the "Cash Management System") and that no Person (as defined below) shall be under any obligation to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicant of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, and the DIP Lender shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as defined below) other than the Applicant, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as

provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

6. THIS COURT ORDERS that, except as otherwise provided to the contrary herein, the Applicant with the prior approval of the Monitor and in accordance with the DIP Documents (as defined below) shall be entitled but not required to pay all reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course, in carrying out the provisions of this Order or for the purpose of the Plan or Restructuring, which expenses shall include, without limitation:

- (a) all outstanding and future wages, salaries, commissions, employee and pension benefits, vacation pay and expenses (including, without limitation, amounts charged by employees to credit cards) and other amounts accruing due to current, former or future employees or to individuals that provide or have provided services to the Applicant as individual contractors, all consistent with existing compensation policies and arrangements;
- (b) all outstanding and future fees and disbursements of any Assistants retained or employed by the Applicant in respect of these proceedings and the Monitor, at their standard rates and charges;
- (c) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance, maintenance, repairs, security services and environmental compliance;
- (d) payment for goods or services actually supplied to the Applicant following the date of this Order;
- (e) all outstanding and future premiums on existing or future directors' and officers' liability insurance, including, without limitation, any premiums in connection with any extended reporting period; and

- (f) any other amounts the payment of which is provided for by the terms of this Order,

provided that, unless specifically contemplated in subparagraphs (a) to (f) listed above, the Applicant shall only be entitled (but not required) to pay costs and expenses that were incurred before the date of this Order with the approval of the Monitor or upon further order in these proceedings.

7. THIS COURT ORDERS that the Applicant shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes; and
- (b) all goods and services or other applicable sales taxes required to be remitted by the Applicant in connection with the sale of goods and services by the Applicant.

8. THIS COURT ORDERS that, except as specifically permitted herein, the Applicant is hereby directed, until further Order of this Court:

- (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicant to any of its creditors as of this date;
- (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and
- (c) to not grant credit or incur liabilities except in the ordinary course of the Business or in respect of the Restructuring.

RESTRUCTURING

9. THIS COURT ORDERS that the Applicant shall subject to the DIP Documents (as hereinafter defined) have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of its business operations;
- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as the Applicant deems appropriate on such terms as may be agreed upon between the Applicant and such employees, or failing such agreement, to deal with the consequences thereof in the Plan;
- (c) repudiate such arrangements or agreements of any nature whatsoever (other than the DIP Documents (as hereinafter defined)), whether oral or written, as the Applicant deems appropriate on such terms as may be agreed upon between the Applicant and such counter-parties, or failing such agreement, to deal with the consequences thereof in the Plan, and to negotiate any new or replacement arrangements or agreements; and
- (d) sell, convey, transfer, assign, lease, or in any other manner dispose of the Property or any part or parts thereof:
 - (i) in the ordinary course of business without the specific approval of the Court;
 - (ii) out of the ordinary course of business without the specific approval of the Court, provided that the sale or transaction price does not exceed \$50,000 in the aggregate;
 - (iii) otherwise, subject to prior approval of the Court; and

provided that, in all cases, the Applicant applies any proceeds thereof in accordance with the DIP Documents (as hereinafter defined);

- (e) pursue all avenues of refinancing and offers for material parts of its Business or Property, in whole or in part, subject to the DIP Documents (as hereinafter defined) and subject to prior approval of this Court being obtained pursuant to paragraph 9(d)(iii) above before completing any material refinancing or sale (except as otherwise permitted by paragraph 9(d)); and
- (f) settle claims of customers and suppliers that are in dispute, with the approval of the Monitor;

all of the foregoing to permit the Applicant to proceed with an orderly restructuring of the Business (the "Restructuring").

10. THIS COURT ORDERS that, without limitation to paragraph 9(e) above, the sale process described in the Henson Affidavit under the heading "Sale Process" (the "Sale Process") is approved, and the Applicant is authorized, in consultation with and under the supervision of the Monitor and subject to the terms of the DIP Documents (as hereinafter defined), to take such steps as it considers necessary or desirable in carrying out the Sale Process, provided that the deadline for the receipt of offers as contemplated by the Sale Process shall not be later than December 14, 2006 unless extended by further Order of this Court.

NO PROCEEDINGS AGAINST THE APPLICANT OR THE PROPERTY

11. THIS COURT ORDERS that until and including November 24, 2006, or such later date as this Court may order (the "Stay Period") but subject to paragraph 36, no proceeding or enforcement process in any court or tribunal (each, a "Proceeding") shall be commenced or continued against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicant and the Monitor or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicant or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

12. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental, administrative or regulatory body or agency, or any other entity or organization (all of the foregoing, collectively being "Persons" and each being a "Person") against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicant and the Monitor or leave of this Court, provided that nothing in this Order shall (i) empower the Applicant to carry on any business which the Applicant is not lawfully entitled to carry on, (ii) exempt the Applicant from compliance with statutory or regulatory provisions relating to health, safety or the environment other than the payment of amounts that could be affected claims pursuant to a Plan, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

13. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, accelerate, withdraw, suspend, fail to renew or extend on reasonable terms, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicant, except with the written consent of the Applicant and the Monitor or leave of this Court.

CONTINUATION OF SERVICES

14. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the Applicant or statutory or regulatory mandates for the supply of goods and/or services (including without limitation all computer software, communication and other data services; centralized banking services; payroll services; customs and brokerage clearing services and the like; insurance; the supply of chemicals, wood, clay or kraft; freight and other transportation services; and power, gas, utility and other services) to the Business or the Applicant, are hereby restrained from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicant unless such person obtains the written consent of the Applicant and Monitor

or leave of this Court, and that the Applicant shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicant in accordance with normal payment practices of the Applicant or such other practices as may be agreed upon by the supplier or service provider and each of the Applicant and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

15. THIS COURT ORDERS that, notwithstanding anything else contained herein, no creditor of the Applicant shall be under any obligation, solely as a result of this Order, to advance or re-advance any monies or otherwise extend any credit to the Applicant after the making of this Order. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

16. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.5(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicant or any other person that by applicable legislation is deemed to be or is treated similar to a director of the Applicant or that presently or in the future manages the business and affairs of the Applicant (each a "Director" and collectively, the "Directors") with respect to any claim against such Directors that arose before the date hereof and that relates to any obligations of the Applicant whereby such Directors are alleged under any law to be liable in their capacity as Directors for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicant, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicant or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

17. THIS COURT ORDERS that, in addition to any existing indemnities, the Applicant shall indemnify each of the Directors from and against the following (collectively, "D&O Claims"):

(a) all costs (including, without limitation, full defence costs), charges, expenses, claims, liabilities and obligations of any nature whatsoever which may arise as a result of any sale of all or part of the Property, the Plan, or his or her association with the Applicant as a Director ~~on or~~ ^{ref} after the date hereof (including, without limitation, an amount paid to settle an action or satisfy a judgment in a civil, criminal, administrative or investigative action or proceeding to which such Director may be made a party by reason of being or having been a Director, provided that such Director (i) acted honestly and in good faith with a view to the best interests of the Applicant and (ii) in the case of a criminal or administrative action or proceeding that is enforced by monetary penalty, such Director had reasonable grounds for believing his or her conduct was lawful) except to the extent that such Director has actively participated in the breach of any related fiduciary duties or has been grossly negligent or guilty of wilful misconduct; and

(b) all costs (including without limitation, full defence costs), charges, expenses, claims, liabilities and obligations relating to the failure of the Applicant at any time to make any payments of the nature referred to in paragraphs 6(a) to (d), 7(a) and 7(b) of this Order or to pay amounts in respect of employee or former employee entitlements to wages, vacation pay, termination pay, severance pay, pension or other benefits or any other amount for services performed (i) on or after the date of this Order or (ii) which amounts become payable on or after the date of this Order, and that he or she sustains or incurs by reason of or in relation to his or her association with the Applicant as a Director, except to the extent that such Director has actively participated in the breach of any related fiduciary duties or has been grossly negligent or guilty of wilful misconduct,

provided that the foregoing shall not constitute a contract of insurance and shall not constitute other valid and collectible insurance as such terms may be used in any existing policy of insurance issued in favour of the Applicant or any of the Directors.

18. THIS COURT ORDERS that the Directors shall be entitled to the benefit of and are hereby granted a fixed and specific charge (the "Directors' Charge") on the Property, which charge shall not exceed an aggregate amount of \$9,500,000, as security for the D&O Claims. The Directors' Charge shall have the priority set out in paragraphs 37 and 39 herein.

19. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Directors shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay the D&O Claims (after taking into account any other claims against the Directors and any expenses covered by such insurance).

APPOINTMENT OF MONITOR

20. THIS COURT ORDERS that Deloitte & Touche Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the Property and the Applicant's conduct of the Business with the powers and obligations set out in the CCAA or set forth herein and that the Applicant and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicant pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations.

21. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) send notice of the making of this Order, within 10 days after the date hereof, to every known creditor of the Applicant having a claim of more than \$250 against it at the address for such creditor as it appears on the Applicant's records, advising that such creditor may obtain a copy of this Order on the internet at the website of the Monitor (www.deloitte.com/ca/stmarys (the "Website")) and if such creditor is unable to obtain it by that means, such creditor may request a copy from the Monitor and the Monitor shall so provide it. Such notice shall be sufficient to comply with subsection 11(5) of the CCAA;
- (b) monitor the Applicant's receipts and disbursements;
- (c) review the Applicant's reports and information required to be provided under the DIP Documents (as defined below), and in particular report on:
 - (i) the payment of pre-filing amounts (if any);
 - (ii) weekly and cumulative cash flow comparisons, and explain variances therein from projection to actual results;
 - (iii) the payment of Priority Payables (as defined in the DIP Documents (as defined below)); and
 - (iv) the payment of such other amounts as more particularly set out in the DIP Documents (as defined below);
- (d) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business and such other matters as may be relevant to the proceedings herein;
- (e) assist the Applicant, to the extent required by the Applicant, in dealing with its creditors and other interested Persons during the Stay Period;

- (f) assist the Applicant, to the extent required by the Applicant, with the preparation of its cash flow projections and any other projections or reports and the development, negotiation and implementation of the Plan and the Restructuring;
- (g) supervise the Sale Process and otherwise assist the Applicant in carrying out the Sale Process, including without limitation taking such steps in consultation with the Applicant as it considers necessary or desirable with respect thereto;
- (h) assist the Applicant, to the extent required by the Applicant, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (i) consider, and if deemed advisable by the Monitor, prepare a report and assessment on the Plan;
- (j) be at liberty to serve as a "foreign representative" of the Applicant in any proceedings outside of Canada;
- (k) be at liberty to give any consents or approvals as are contemplated by this Order;
- (l) have full and complete access to the books and records and management, employees and advisors of the Applicant and to the Business and the Property to the extent required to perform its duties arising under this Order;
- (m) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- (n) perform such other duties as are required by this Order or by this Court from time to time.

22. THIS COURT ORDERS that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of

the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

23. THIS COURT ORDERS that nothing herein shall deem or cause the Monitor to be considered to be a successor employer, sponsor or payor with respect to the Applicant or any employees or former employees of the Applicant under the *Labour Relations Act* (Ontario), any collective agreement or any other contract between the Applicant and any of its present or former employees, the *Pensions Benefits Act* (Ontario), or under any other provincial or federal legislation, regulation or rule of law or equity applicable to employees or pension, or otherwise.

24. THIS COURT ORDERS that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation.

25. THIS COURT ORDERS that that the Monitor may provide any creditor or other relevant stakeholders of the Applicant with information provided by the Applicant in response to reasonable requests for information made in writing addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to the provisions of this Order or the CCAA. In the case of

information that the Monitor has been advised by the Applicant is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicant may agree; provided however, the Monitor shall be entitled to provide such information to the DIP Lender in accordance with any request for information pursuant to the DIP Documents (as defined below).

26. THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

27. THIS COURT ORDERS that the Monitor, counsel to the Monitor and counsel to the Applicant shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicant as part of the costs of these proceedings. The Applicant is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicant on a weekly basis and, in addition, the Applicant is hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to the Applicant, reasonable retainers to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

28. THIS COURT ORDERS that the Monitor, counsel to the Monitor and the Applicant's counsel shall be entitled to the benefit of and are hereby granted a fixed and specific charge (the "Administration Charge") on the Property as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 37 and 39 hereof.

FINANCING

29. THIS COURT ORDERS that the entering into by the Applicant of the accommodation and debtor-in-possession (DIP) financing agreement (the "Accommodation

Agreement”) dated as of October 25, 2006 between the Applicant and the DIP Lender providing for, among other things, the continuation and amendment of the loan and security agreement made as of July 30, 2004, as amended (collectively, with the Accommodation Agreement, the “DIP Loan Agreement”) is hereby approved and the Accommodation Agreement and the DIP Loan Agreement are hereby ratified and confirmed.

30. THIS COURT ORDERS that all Agent’s and Lenders’ Liens (as defined in the Accommodation Agreement) be and are hereby ratified and confirmed and shall continue in full force and effect securing all Obligations (as defined in the Accommodation Agreement).

31. THIS COURT ORDERS that, notwithstanding any other provision of this Order, the Applicant is hereby authorized to borrow, repay and reborrow from the DIP Lender such amounts from time to time as the Applicant may consider necessary or desirable pursuant to the revolving credit facility under the DIP Loan Agreement, up to a maximum principal amount of \$28 million outstanding at any time (in addition to any amounts borrowed under the term loan pursuant to the DIP Loan Agreement) to fund the ongoing expenditures of the Applicant and to pay such other amounts as are permitted by the terms of this Order and the DIP Loan Agreement (such facility, together with the term loan facility pursuant to the DIP Loan Agreement, the “DIP Facilities”).

32. THIS COURT ORDERS that the Applicant is hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, together with the DIP Loan Agreement and all existing and future security and other documents in respect thereof, the “DIP Documents”), as are contemplated by the Accommodation Agreement or as may be reasonably required by the DIP Lender pursuant to the terms thereof.

33. THIS COURT ORDERS that the Applicant is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the DIP Documents (including for greater clarity, the utilization of the blocked account and lockbox arrangements) as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

34. THIS COURT ORDERS that the DIP Lender shall be entitled to the benefit of and is hereby granted a fixed and specific charge (the "DIP Lender's Charge") on the Property as security for all of the DIP Accommodations as defined in the Accommodation Agreement and all other obligations of the Applicant under the DIP Documents, which charge shall not exceed the aggregate amount owed to the DIP Lender under the DIP Documents. The DIP Lender's Charge shall have the priority set out in paragraphs 37 and 39 hereof.

35. THIS COURT ORDERS that, notwithstanding any other provision of this Order:

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the DIP Documents;
- (b) upon the occurrence of an event of default under the DIP Documents, the DIP Lender, upon 3 business days' notice to the Applicant and the Monitor or such shorter notice as this Court shall approve, may exercise any and all of its rights and remedies against the Applicant or the Property under or pursuant to the DIP Documents, including without limitation, to cease making advances to the Applicant and set off and/or consolidate any amounts owing by the DIP Lender to the Applicant against the obligations of the Applicant to the DIP Lender under the DIP Documents or the DIP Lender's Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicant and for the appointment of a trustee in bankruptcy of the Applicant, and upon the occurrence of an event of default under the terms of the DIP Documents, the DIP Lender shall be entitled to seize and retain proceeds from the sale of the Property and the cash flow of the Applicant to repay amounts owing to the DIP Lender in accordance with the DIP Documents and the DIP Lender's Charge, but subject to the priorities as set out in paragraphs 37 and 39 of this Order; and

- (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicant or the Property.

36. THIS COURT ORDERS AND DECLARES that, notwithstanding paragraph 11 but subject to paragraph 35, the DIP Lender shall be treated as unaffected by any stay created in these proceedings and as unaffected under any Plan or any proposal filed by the Applicant under the *Bankruptcy and Insolvency Act* of Canada (the "BIA").

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

37. THIS COURT ORDERS that the priorities of the Directors' Charge, the Administration Charge and the DIP Lender's Charge, as among them, shall be as follows:

- (a) First - the Administration Charge (to the maximum amount of \$500,000);
- (b) Second - Directors' Charge (to the maximum of \$3.4 million in respect of obligations referred to in paragraphs 6(a) and 7(a) of this Order to the extent that the non-payment of such obligations would render the Directors personally liable);
- (c) Third - the DIP Lender's Charge;
- (d) Fourth - the Administration Charge in respect of the balance, if any, of amounts secured thereby; and
- (e) Fifth - Directors' Charge (to the maximum amount of \$6,100,000).

38. THIS COURT ORDERS that the filing, registration or perfection of the Directors' Charge, the Administration Charge or the DIP Lender's Charge (collectively, the "CCAA Charges") shall not be required, and that the CCAA Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the CCAA Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

39. THIS COURT ORDERS that each of the CCAA Charges (all as constituted and defined herein) shall constitute a charge on the Property and such CCAA Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, statutory or otherwise (collectively, "Encumbrances") in favour of any Person, except the following:

- (a) existing security interests created and registered in accordance with applicable personal property security legislation and recognized under such legislation or any agreement with the DIP Lender as being entitled to priority over the security of the DIP Lender in place immediately prior to the making of this Order in respect of the DIP Loan Agreement, to the extent of amounts secured by such security interests as of the date hereof;
- (b) in respect of any real property, existing (i) zoning, use and building by-laws and ordinances, federal, provincial or municipal by-laws and regulations as to the use of such Property, (ii) notices of lease, (iii) subdivision agreements, site plan control agreements, development agreements, servicing agreements and other similar agreements with municipal and other governmental authorities, and (iv) permits, reservations, restrictions, covenants, servitudes, watercourse, rights of water, rights of access or user licenses, easements, rights-of-way and rights in the nature of easements;
- (c) future purchase-money security interests registered in accordance with applicable personal property security legislation and recognized under such legislation as being entitled to the priority of purchase-money security interests, provided the creation of any such security interests has been permitted pursuant to the terms of the DIP Documents.

40. THIS COURT ORDERS that except as otherwise expressly provided for herein or as may be approved by this Court, the Applicant shall not grant any Encumbrances over any Property that ranks in priority to, or *pari passu* with, any of the CCAA Charges (collectively, the "Chargees"), unless the Applicant also obtains the prior written consent of the Monitor and the beneficiaries of the CCAA Charges.

41. THIS COURT ORDERS that the DIP Documents and the CCAA Charges shall not be rendered invalid or unenforceable and the rights and remedies of the DIP Lender and/or the Chargees thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "Agreement") which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the CCAA Charges nor the execution, delivery, perfection, registration or performance of the DIP Documents shall create or be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicant entering into the Accommodation Agreement or Commitment Letter, the creation of the CCAA Charges, or the execution, delivery or performance of the DIP Documents; and
- (c) the payments made by the Applicant pursuant to this Order or the DIP Documents, and the granting of the CCAA Charges, do not and will not constitute fraudulent preferences, fraudulent conveyances, oppressive conduct, settlements or other challengeable, voidable or reviewable transactions under any applicable law.

SERVICE AND NOTICE

42. THIS COURT ORDERS that the Applicant and the Monitor be at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other

correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the Applicant's creditors or other interested parties at their respective addresses as last shown on the records of the Applicant and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

43. THIS COURT ORDERS that the Applicant, the Monitor, and any party who has filed a Notice of Appearance may serve any court materials in these proceedings by e-mailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, in accordance with the E-filing protocol of the Commercial List to the extent practicable, and the Monitor may post a copy of any or all such materials on the Website.

GENERAL

44. THIS COURT ORDERS that the Applicant or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

45. THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicant, the Business or the Property.

46. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT OF ST. MARYS PAPER LTD.
APPLICATION UNDER THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

Court File No.

06-CL-6699

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

INITIAL ORDER

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Solicitors for the Applicant

8705749

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

In the matter of the CCAA

+ in the matter of
AND
proposed plan re St Marys Paper Ltd.

Plaintiff(s)

Defendant(s)

Case Management Yes No by Judge: _____

Counsel	Telephone No.:	Facsimile No.:

- Order Direction for Registrar (No formal order need be taken out)
- Above action transferred to the Commercial List at Toronto (No formal order need be taken out)

- Adjourned to: _____
- Time Table approved (as follows): _____

The Applicant, St Marys Paper Ltd, applies for an initial stay order pursuant to the provisions of the CCAA. It carries on business as a manufacturer + seller of paper. It is the 3rd largest industrial employer in the community of Sault Ste. Marie + has 385 employees + 185 retirees who receive pensions from plans sponsored by the company. As a result of a number of factors including changes in exchange rates, foreign funding costs, energy prices + kraft pulp prices, the company is in financial difficulty. It is insolvent + has creditor claims against it which exceed \$5 million + therefore meets these requirements of the CCAA. It has virtually exhausted its credit facilities + available liquidity + is in breach of certain covenants with its senior lender, Bank of America N.A. ("B of A"). The company seeks relief to enable it to negotiate a plan or alternatively to market

Oct 25/06

Date

St. J. P. [Signature]

Judge's Signature

Additional Pages 1

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsement Continued

the business of the mill to potential purchasers. BGA is the sole senior lender & supports the Applicant's request. It has issued an application for a bankruptcy order but it is agreed that it will be stayed by the requested CCAA order. There are also PPSA creditors & trade creditors.

BCA was served & takes no position & the Communications Energy & Paperworkers Union of Canada which represents approximately 80% of the 385 employees under 14 collective bargaining agreements was also served.

It is proposed that Deloitte & Touche (us) be the monitor & BGA has agreed to provide DIP financing including a revolving credit facility of \$25 million. The Company estimates that it will need to draw up to \$26.2 million under these facilities before the expiry of the initial 30 day stay.

I am of the view that the relief requested should be granted so as to enable the company to restructure on a stand alone basis or any concern sale basis. I have signed the original order & it may be issued forthwith.

[Signature]